

IC 8-1-3

Chapter 3. Judicial Review of Utility Regulatory Commission Decisions

IC 8-1-3-1

Appeals; time limitations; assignments of error

Sec. 1. Any person, firm, association, corporation, limited liability company, city, town, or public utility adversely affected by any final decision, ruling, or order of the commission may, within thirty (30) days from the date of entry of such decision, ruling, or order, appeal to the court of appeals of Indiana for errors of law under the same terms and conditions as govern appeals in ordinary civil actions, except as otherwise provided in this chapter and with the right in the losing party or parties in the court of appeals to apply to the supreme court for a petition to transfer the cause to said supreme court as in other cases. An assignment of errors that the decision, ruling, or order of the commission is contrary to law shall be sufficient to present both the sufficiency of the facts found to sustain the decision, ruling, or order, and the sufficiency of the evidence to sustain the finding of facts upon which it was rendered.

(Formerly: Acts 1957, c.189, s.1.) As amended by P.L.23-1988, SEC.34; P.L.8-1993, SEC.118.

IC 8-1-3-2

Petition for rehearing; time for ruling; actions for mandate; termination of right of appeal

Sec. 2. (a) If a petition for rehearing is filed with the commission by a party to the proceeding before the commission, within the time allowed by the rules of the commission, the commission must rule on the petition within a reasonable period of time after the filing of the final pleading filed in support of or opposition to the petition. If the commission fails to rule on the petition within a reasonable period of time, the petitioner may bring an action for mandate under IC 34-27 to compel the commission to make the ruling. However, notwithstanding IC 34-27 or any other law or rule, the action for mandate may only be filed in the court of appeals. For the purposes of IC 1-1-1-8, if any part of this subsection is held invalid, the entire subsection is void.

(b) If a petition for rehearing is filed with the commission by any party to the proceeding before the commission, within the time allowed by the rules of the commission, and prior to the filing of the commission record with the clerk of the supreme court, the right to appeal under this chapter terminates thirty (30) days after the determination by the commission on such petition for rehearing. The appeal shall not be submitted prior to that determination of the petition for rehearing, and the decision of the commission on the petition shall not be assigned as error unless the final decision, ruling, or order of the commission is modified or amended as a result of the petition without further hearing ordered.

(Formerly: Acts 1957, c.189, s.2.) As amended by P.L.3-1989,

SEC.51; P.L.106-1989, SEC.2; P.L.1-1998, SEC.87.

IC 8-1-3-3

Petition to be made party applicant; intervenor or protestant

Sec. 3. Any person firm, association, corporation, limited liability company, city, town or public utility may file with the clerk of the court a verified petition to be made a party appellant or appellee, which petition shall allege facts showing that the petitioner has a substantial interest in the determination of the action, and such petitioner shall be made a party appellant or appellee as its interest appears. Any party applicant, intervenor or protestant in the proceedings had before the commission in the matter from which the appeal is taken shall be and have the rights of a party on appeal, upon the filing of a written appearance therein. But no party by his appearance or petition to be made a party shall acquire the right to file a brief, the time for filing of which has expired prior to his appearance.

(Formerly: Acts 1957, c.189, s.3.) As amended by P.L.8-1993, SEC.119.

IC 8-1-3-4

Assignment of errors and transcript of record; filing

Sec. 4. (a) Within twenty (20) days after the entry or rendition of any final decision, ruling, or order of the commission, or within twenty (20) days after the entry or rendition of any determination of the commission upon a petition for rehearing duly filed pursuant to the rules of the commission, any person, firm, association, corporation, limited liability company, city, town, or public utility desiring to appeal the cause to the court of appeals shall file with the commission a written request for the record, and the commission shall order that a certified transcript be prepared, containing all pleadings and papers filed, notices given and entered of record, proceedings had, testimony taken, and orders entered.

(b) No extension of time shall be granted by the court of appeals for the filing of an assignment of errors and the transcript of the record, unless a showing be made that the written request for the record was duly filed within the time granted under this section.

(Formerly: Acts 1957, c.189, s.4.) As amended by P.L.3-1989, SEC.52; P.L.8-1993, SEC.120.

IC 8-1-3-5

Service of papers

Sec. 5. A copy of any assignment of errors or of cross-errors filed in the court of appeals shall be served by mail, on or before the date of such filing, upon all parties or their attorneys of record as shown by the commission record filed. Copies of briefs shall be served, by mail, upon only the attorney general and those parties or their attorneys of record who have filed an appearance or assignment of errors with the clerk of the supreme court.

(Formerly: Acts 1957, c.189, s.5.) As amended by P.L.3-1989,

SEC.53.

IC 8-1-3-6

Presumption; rates; collection pending appeal

Sec. 6. All rules, practices, installations, and services prescribed, approved, or required by the commission shall be in force and shall be prima facie reasonable unless finally found otherwise by the court of appeals or by the supreme court if the cause is transferred to and decided by that court. However, pending the appeal as in this chapter provided, any municipally owned utility, public utility, rural electric membership corporation, or rural telephone cooperative association whose rate or rates are affected by the decision, ruling, or order appealed from shall have the right to collect the rate or rates as fixed by said decision, ruling, or order, or the former rate, whichever is higher in amount, and such municipally owned utility, public utility, corporation, or association shall refund the difference to each consumer or contract customer if such difference be not sustained upon appeal. However, pending the appeal as in this chapter provided, the court of appeals, upon good cause shown by verified petition, may authorize and permit, but not require, any common or contract carrier whose rate or rates are affected by the decision, ruling, or order appealed from, to collect the rate or rates published and in effect or the rate or rates sought to be put into effect, immediately prior to the commencement of the proceeding before the commission, subject to such provisions for bond or escrow as the court shall provide to protect the interest of all parties of record before the court.

(Formerly: Acts 1957, c.189, s.6.) As amended by Acts 1977, P.L.100, SEC.1; P.L.384-1987(ss), SEC.8.

IC 8-1-3-7

Determination of appeal; remand of proceedings for rehearing; injunctions

Sec. 7. (a) Upon determination of the appeal, the court shall have jurisdiction to affirm or set aside such decision, ruling, or order of the commission, in whole or in part, or remand the proceeding to the commission with instructions. No evidence beyond that contained in the record of the proceedings before the commission shall be considered or received by the court, except that in cases where issues of confiscation or of constitutional right are involved, the court, on its own motion or verified petition of a party, may order such additional evidence as it deems necessary for the determination of such issues to be taken before the commission and to be received at the hearing before the commission in such manner and upon such terms and conditions as the court shall order.

(b) If a new hearing is ordered under subsection (a), the commission is not required to receive any evidence as to facts which were in existence at the time of the prior commission hearing or hearings, except upon a showing, either to the court in the first instance, or the commission, upon the hearing, that:

- (1) the evidence was not available for presentation to the commission prior to the entry of its final decision, ruling, or order, or prior to the determination of the commission upon the petition for rehearing, if a petition for rehearing was filed; and
- (2) due diligence was exercised by the party offering the evidence to procure and present the evidence to the commission prior to the entry of its final decision, ruling, or order, or its determination upon the petition for rehearing, if any was filed.

(c) Whenever the court shall order additional evidence to be taken the commission shall promptly hear and report the evidence to the court so that the proof may be brought as nearly as reasonably possible down to the date of its report to the court. The commission may, after hearing such evidence, modify its findings as to facts and its original decision, ruling, or order, and it shall file with the court the amended decision or orders and any modified or new findings.

(d) If the commission modifies or amends its original decision or orders, the appealing party or any other party aggrieved by the modified or amended decision or order may file with the court, within the time allowed by the court, a specification of any errors of law claimed to have been made by the commission in the modified decision or orders. A specification of errors shall be considered by the court in addition to the errors of law asserted in the assignment or assignments of error.

(e) The supreme court and the court of appeals, as the case may be, have jurisdiction, upon application of the commission or any party, to order or enjoin temporarily or permanently the enforcement of any determination, ruling, or order of the commission made in the cause.

(f) The supreme court and the court of appeals, as the case may be, also have jurisdiction upon application of a public utility to issue temporary injunctions protecting the utility in the collection of rates determined by the court to be nonconfiscatory during the pendency of the proceeding and until nonconfiscatory rates are fixed by the commission if existing rates are finally determined to be confiscatory, with appropriate provisions as to bonds and refunds. *(Formerly: Acts 1957, c.189, s.7.) As amended by P.L.3-1989, SEC.54.*

IC 8-1-3-8

Costs

Sec. 8. The cost of preparing the transcript of the record, on reasonable terms fixed by general administrative order of the commission, shall be paid in the first instance upon receipt of the transcript by the person filing the written request for the transcript, and the amount shall be stated as paid in the certificate of the secretary which authenticates the transcript of record. However, all costs incurred in connection with the appeal shall be awarded and taxed as provided in other appeals of a civil nature in the supreme court or the court of appeals. That part of the cost of the transcript of the record which is incurred by reason of the transcription of oral

testimony by any reporter appointed by the commission shall become the property of the reporter when paid.

(Formerly: Acts 1957, c.189, s.8.) As amended by P.L.3-1989, SEC.55.

IC 8-1-3-9

Opposing affidavits; time to file

Sec. 9. Upon the filing of any petition provided for in this chapter, all parties of record on appeal shall have ten (10) days, or such other time as provided by the court of appeals or supreme court, in which to file opposing affidavits.

(Formerly: Acts 1957, c.189, s.9.) As amended by P.L.59-1984, SEC.49.

IC 8-1-3-10

Questions of law; certification by commission

Sec. 10. The commission, of its own motion, may certify questions of law to the court of appeals for a decision and determination.

(Formerly: Acts 1957, c.189, s.10.) As amended by P.L.3-1989, SEC.56.

IC 8-1-3-11

Enforcement proceedings by commission

Sec. 11. Nothing in this chapter contained shall be construed to affect the duty or power of the commission to commence and prosecute enforcement proceedings in its own name or the name of the state of Indiana, in the circuit or superior courts of this state, pursuant to the provisions of other statutes, except insofar as such proceedings may interfere with the jurisdiction of the court of appeals or supreme court in a cause then pending on appeal.

(Formerly: Acts 1957, c.189, s.11.) As amended by P.L.59-1984, SEC.50; P.L.23-1988, SEC.35.

IC 8-1-3-12 Repealed

(Repealed by P.L.59-1984, SEC.51.)